

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mike Cordale Henderson,

Case No. 22-cv-0566 (WMW/ECW)

Petitioner,

v.

State of Minnesota and County of
Hennepin,

**ORDER GRANTING
PETITIONER'S APPLICATION
TO PROCEED *IN FORMA*
PAUPERIS ON APPEAL**

Respondents.

This matter is before the Court on Petitioner Mike Cordale Henderson's application to proceed *in forma pauperis* on appeal from this Court's dismissal of his petition for a writ of habeas corpus as untimely. (Dkt. 28.)

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is taken in good faith if a litigant "seeks appellate review of any issue not frivolous." *Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is frivolous when "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). And an appeal lacks a reasonable basis in law when "the claim is based on an indisputably meritless legal theory." *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992).

Henderson's habeas petition was a collateral attack on the validity of two state criminal convictions. In an April 21, 2022 Report and Recommendation, United States Magistrate Judge Elizabeth Cowan Wright recommended that the Court dismiss Henderson's petition because it was "plainly untimely" under 28 U.S.C. § 2244(d) and,

therefore, foreclosed. The magistrate judge recommended, and this Court agreed, that no equitable doctrine would permit the Court to excuse the untimeliness of Henderson's petition. And the magistrate judge recommended that, because the grounds upon which the dismissal was recommended are not reasonably debatable, Henderson should not be granted a certificate of appealability. The Court agreed and remains satisfied that this conclusion is correct. But, in order to not foreclose any such argument that Henderson could make, and in light of Henderson's ability to renew his request for a certificate of appealability before the United States Court of Appeals for the Eighth Circuit, the Court grants Henderson's application to proceed *in forma pauperis* on appeal.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Petitioner Mike Cordale Henderson's application to proceed in forma pauperis on appeal, (Dkt. 28), is **GRANTED**.

Dated: November 7, 2022

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge